

***HIGHLIGHTS OF CHART COMPARISON
BETWEEN PLAN QUALIFICATION REQUIREMENTS
UNDER THE CODE AND THE PRIRC***

The following addendum to the chart is meant to highlight specific Code sections which contain major differences between the Code and the PRIRC. These differences have a major impact on dual-qualified plans. Especially, plans that have a Cash or Deferred Arrangement (CODA).

<i>Code § or Administrative Guidance</i>	<i>PRIRC § or Regulation Article</i>	<i>Subject Matter</i>	<i>Comments</i>
401(a)(3)	1165(a)(3)	Minimum Coverage Test	<ul style="list-style-type: none"> • Similar requirement that plans pass minimum coverage test. • Technically, test is similar but not identical. • In practice, test results can be different.
401(a)(4)	1165(a)(4)	General Nondiscrimination Test on Benefits and Contributions	<ul style="list-style-type: none"> • Technically the same requirement. • Mechanics of the test completely different (objective testing in the U.S. vs. facts-and-circumstances testing in P.R.).
401(a)(17)	None	Annual Compensation Limits	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(26)	None	Minimum Participation Requirements for Pension Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.

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<i>Code § or Administrative Guidance</i>	<i>PRIRC § or Regulation Article</i>	<i>Subject Matter</i>	<i>Comments</i>
401(k)	1165(e)	Qualified Cash or Deferred Arrangements	<ul style="list-style-type: none"> • Different Rules. • Lower elective deferral limits IRA contributions offset of elective deferrals. • No COLA adjustment of limits. • No catch-up contributions. • Technically, ADP test is similar, but due to different “HCE” definition, in practice results are different. • No safe harbor plans.
401(l)	1165(a)(5) and Article 1165-3(c)	Permitted Disparity/Social Security Integration	<ul style="list-style-type: none"> • No specific safe harbors, only facts-and-circumstances testing. • Potentially much broader. • Allows for integrating-out employees.
401(m)	• None	Nondiscrimination Test for Matching and Employee Contributions/ACP Test	<ul style="list-style-type: none"> • No PRIRC counterpart. • Contributions other than elective deferrals are tested under the general nondiscrimination test of PRIRC § 1165(a)(4). • There is a limit on employee after-tax contributions, but it does not operate as a discrimination test.
402(g)	1165(e)(7)	Annual Limit on Elective Deferrals	<ul style="list-style-type: none"> • PR limit of lesser of 10% of compensation or \$8,000. • \$8,000 prong is offset by contributions to P.R. tax-deferred IRAs. • No catch-up contributions nor COLA adjustments. • Similar procedures for correction of excess deferrals.
410(b)	1165(a)(3)	Minimum Coverage Test	<ul style="list-style-type: none"> • Mostly similar rules, but due to different HCE definition, in practice results may differ.
412	None	Minimum Funding Requirements	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 302.
414(q)	1165(e)(3)(E)(iii)	Definition of “Highly Compensated Employee”	<ul style="list-style-type: none"> • Different definition. • HCEs are Employees in the top 1/3 of the compensation scale.